

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, D.C.**

Department of Transportation,

Complainant

v.

Air Canada

Respondent

Violations of 14 CFR Part 259 and  
49 U.S.C. §§ 41712

Docket DOT-OST-2021-0073

**MOTION TO COMPEL THE USE OF PROPER ENGLISH**

Communications with respect to this document should be sent to:

Mike Borsetti  
600 Montgomery St Ste 2400  
San Francisco, CA 94111  
[mike@borsetti.com](mailto:mike@borsetti.com)

7 July 2021

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Docket DOT-OST-2020-0178

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**A. BACKGROUND**

1. The Department of Transportation has never received more consumer complaints than it did in 2020 as to the wide range of airlines that did not provide the contracted

transportation service yet also refused timely refunds.<sup>1</sup> I am among the many consumers affected.<sup>2</sup> As a recurring purchaser of air transportation services from Air Canada and other airlines, I have interest in this precedent-setting public proceeding.

2. In reviewing Air Canada's Answer, I was struck by the carrier's abuse of terminology of the English language. In particular, Air Canada repeatedly misuses the crucial term "refund", attempting to conflate an actual refund to the original form of payment (widely understood to be required in response to an airline cancelling a flight) with a credit to some form of script. These two concepts are manifestly different, and their difference is the crux of this proceeding. This Court should not tolerate Air Canada's attempt to confuse the two. The best remedy is to insist that Air Canada refile its Answer with correct, standard terminology consistent dictionary meaning and common usage.

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<sup>1</sup> *Air Travel Consumer Report: December 2020, Full Year 2020 Numbers*, <https://www.bts.gov/newsroom/air-travel-consumer-report-december-2020-full-year-2020-numbers>

<sup>2</sup> See informal complaints DK2020080496 and DK2020080497 with the Department of Transportation demonstrating that both airlines violated 49 U.S.C. Subtitle VII, 14 C.F.R. § 259.5, 14 C.F.R. § 374.3 and 14 C.F.R. § 221.101. Although an untimely refund was eventually provided, it was not inclusive of interest starting on the seventh day as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§ 1601–1693r and 12 CFR Part 226 (Regulation Z).

## **B. AIR CANADA'S ANSWER**

3. English language dictionaries define to “refund” as “to return (money) in restitution, repayment, or balancing of accounts” or equivalent language.<sup>3</sup>

4. Air Canada claims that “flight travel credits” lasting “for two years” are “refunds”.<sup>4</sup> But credits are **not refunds**, because issuing a credit is different from “return[ing] (money) in restitution”. The dictionary definition of “refund” makes clear that a refund must be a “return”, i.e. putting something back in the place and form where it previously resided.

5. Air Canada claims that “Air Canada Travel Vouchers”, which are can only be used to “purchase travel on Air Canada or any of its partner airlines”, are “refunds”.<sup>5</sup> But they are **not refunds**, as a voucher is also not “return[ing] (money) in restitution”. Rather, it is creating something new and different, namely the voucher, not returning value to the original form in which it resided prior to the customer’s initial purchase.

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<sup>3</sup> Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/refund>. The Oxford Dictionary similarly defines refunds as “Pay back (money), typically to a customer who is not satisfied with goods or services bought” and “Pay back money to (someone)” (<https://www.lexico.com/definition/refund>), as does the Cambridge Dictionary (<https://dictionary.cambridge.org/dictionary/english/refund>). See Exhibit A.

<sup>4</sup> Page 4: “Air Canada offered its customers a number of refund options [...] The first option was a full refund in the form of a travel credit. [...] Air Canada provided flight travel credits (“FTCs”) which lasted for two years [...]” Page 5: “securing their full refund through an AC Refund travel credit”.

<sup>5</sup> Page 4: “Air Canada offered its customers a number of refund options [...] Air Canada offered passengers Air Canada Travel Vouchers (“ACTVs”), which are essentially cash-equivalent products”.

6. Air Canada further claims that these Vouchers are “cash-equivalent”. They are not cash-equivalent, since “equivalent” in the English language means “corresponding or virtually identical especially in effect or function,” yet these vouchers are significantly restricted in *function*.<sup>6</sup> In particular, these vouchers can only be used to transact with a single business, Air Canada, whereas ordinary funds may be used to pay all manner of businesses worldwide, to pay taxes, to give gifts, to invest, etc. Other government documents confirm the meaning of “cash equivalent.” For example, the US Generally Accepted Accounting Principles (GAAP) define “cash equivalent” as “short-term, highly liquid investments that are readily convertible to known amounts of cash and that are so near their maturity that they present insignificant risk of changes in value because of changes in interest rates”.<sup>7</sup> In contrast, Air Canada will never pay out its travel voucher value in cash, nor is there any marketplace to “*readily convert*” them to “*known amounts of cash*”.

7. Finally, Air Canada claims that a lump sum of miles in Air Canada’s frequent flyer program is a “refund”.<sup>8</sup> But it is **not a refund**, as frequent flyer miles are not money per Air Canada’s own contract: “points have no monetary value and cannot under

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<sup>6</sup> <https://www.merriam-webster.com/dictionary/equivalent>

<sup>7</sup> See Financial Accounting Standards Board Accounting Standards Codification (“FASB ASC”) paragraph 305-10-20. This definition is functionally identical to the one of the International Financial Reporting Standards promulgated by the International Accounting Standards Board (IASB), and endorsed by the Accounting Standards Board of Canada: “cash equivalents comprise cash on hand and demand deposits, together with short-term, highly liquid investments that are readily convertible to a known amount of cash, and that are subject to an insignificant risk of changes in value” (<https://www.iasplus.com/en/standards/ias/ias7>)

<sup>8</sup> Page 5: “receive their full refund in the form of a lump sum of miles in Air Canada’s frequent flyer program”

any circumstances form the basis of a monetary claim”, and do not entitle their owner to “any vested rights.”<sup>9</sup> No money is therefore “returned in restitution.”<sup>10</sup>

### C. MOTION

8. To benefit this Docket, I hereby request per 14 CFR 302.11 that the Administrative Law Judge finds Air Canada’s submission inadmissible on the grounds that it does not contain a “complete statement of the facts” required by 14 CFR 302.4. The ALJ should require Air Canada and any other filer to use proper standard English, consistent with dictionary definitions.

9. Specifically, the ALJ should reject any filing that misuses the word “refund” as a synonym for “credit” or “voucher”, or that otherwise uses the word “refund” to refer

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<sup>9</sup> Aeroplan program General Terms and Conditions,  
<https://www.aircanada.com/ca/en/aco/home/aeroplan/legal/terms-and-conditions.html>

<sup>10</sup> While Air Canada *may*, subject to its right to “unilaterally amend, restrict, suspend, extend or otherwise alter [...] any benefit of the Aeroplan Program at any time” without advance notice (except for residents of Quebec), allow the holder of Aeroplan miles to redeem them for cash-equivalent prepaid VISA or MasterCard cards, not only this is an unduly burdensome step for the consumer, but it inflicts substantial losses on any consumer who chooses this route. For example, a US\$ 1,000 ticket for which Air Canada did not provide any of the transportation purchased will be exchanged for 76,923 Aeroplan miles (Page 5), which the consumer can currently redeem for two \$200 prepaid cards and a single \$75 one (Aeroplan website), totaling \$475 of value and leaving \$525 lost, thus seizing more than half of the cost of the services Air Canada did not provide. In addition, most prepaid cards accrue monthly fees after a short time, and are not replaceable if lost or stolen. Not only are Aeroplan miles **not a refund**, under these terms they are particularly far from being a “full” refund. Finally, Air Canada explicitly warns in its terms that “you may not rely upon the continued availability of any reward, benefit or privilege, including without limitation any reward price, redemption/reward chart”; these very important words were left out of the Answer, who deceptively leads the reader to assume that prepaid card redemption is a consumer's right when it is no such thing.

*Motion*

to a provision of value inconsistent with the definition in the English language of an unrestricted return to the original form of payment in restitution and repayment.

**D. REQUEST FOR INTERVENTION**

10. I hereby petition the ALJ per 14 CFR 302.20 to allow me to intervene with the above written motion as to the use of proper English by all participants in this proceeding. My limited intervention will assist in the development of a sound record and thereby have a positive impact on this proceeding and on the protection of the public interest.

Respectfully submitted,

/s/

Mike Borsetti

**CERTIFICATION**

The contents of this Complaint and the attached exhibits are true and correct to the best of my knowledge and belief. Pursuant to Title 18 United States Code Section 1001, I Mike Borsetti, have not in any manner knowingly and willfully falsified, concealed or failed to disclose any material fact or made any false, fictitious, or fraudulent statement or knowingly used any documents which contain such statements in connection with the preparation, filing or prosecution of this motion. I understand that an individual who is found to have violated the provisions of 18 U.S.C. § 1001 shall be fined or imprisoned not more than five years, or both.

/s/

Mike Borsetti



## **CERTIFICATE OF SERVICE**

A copy of the foregoing has been served as required by 14 CFR 302.7 this day of 7 July 2021 upon the following parties via electronic mail, and no indication was received that any transmission had failed:

- For the U.S. Department of Transportation:
  - Blane A. Workie, Assistant General Counsel for Aviation Enforcement and Proceedings: [blane.workie@dot.gov](mailto:blane.workie@dot.gov)
  - Kimberly Graber, Branch Chief, Consumer Protection and Competition Law, Aviation Enforcement and Proceedings: [kimberly.graber@dot.gov](mailto:kimberly.graber@dot.gov)
  - Rob Gorman, Senior Trial Attorney, Office of Aviation Enforcement and Proceedings: [robert.gorman@dot.gov](mailto:robert.gorman@dot.gov)
  - Office of Hearings: [M20.HrgDocs@dot.gov](mailto:M20.HrgDocs@dot.gov)
- For Air Canada:
  - Evelyn D. Sahr, Counsel for Air Canada, [esahr@eckertseamans.com](mailto:esahr@eckertseamans.com)
  - Charles A. Zdebski, Counsel for Air Canada, [czdebski@eckertseamans.com](mailto:czdebski@eckertseamans.com)
  - Mark A. Johnston, Counsel for Air Canada, [mjohnston@eckertseamans.com](mailto:mjohnston@eckertseamans.com)
  - Drew M. Derco, Counsel for Air Canada, [dderco@eckertseamans.com](mailto:dderco@eckertseamans.com)

/s/

Mike Borsetti

EXHIBIT A

Merriam-Webster Dictionary, <https://www.merriam-webster.com/dictionary/refund>:

# refund verb (1)

 Save Word

re·fund | \ ri-ˈfənd , ˈrē-,fənd \

**refunded; refunding; refunds**

## Definition of *refund* (Entry 1 of 3)

transitive verb

- 1** : to give or put back
- 2** : to return (money) in restitution, repayment, or balancing of accounts

The Oxford Dictionary, <https://www.merriam-webster.com/dictionary/refund>, UK English:




[Home](#) > [UK English](#) > [refund](#)

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Meaning of refund in English:

# refund



Pronunciation  /rɪˈfʌnd/  /ˈriːfʌnd/ 

[See synonyms for refund](#)

Translate [refund](#) into Spanish

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## VERB

[WITH OBJECT]

- 1 Pay back (money), typically to a customer who is not satisfied with goods or services bought.

*'if you're not delighted with your purchase, we guarantee to refund your money in full'*

[+ More example sentences](#)

[+ Synonyms](#)

- 1.1 Pay back money to.

*'I'll refund you for the apples and any other damage'*

[+ More example sentences](#)

[+ Synonyms](#)

The Oxford Dictionary, <https://www.merriam-webster.com/dictionary/refund>, US English:

[Home](#) > [US English](#) > [refund](#)

Definition of refund in English:

# refund



Pronunciation /rəˈfænd/ /ˈrēˌfænd/ /ˈriˌfænd/

[See synonyms for refund](#)

Translate [refund](#) into Spanish

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## TRANSITIVE VERB

[WITH OBJECT]

- 1 Pay back (money), typically to a customer who is not satisfied with goods or services bought.

*'if you're not delighted with your purchase, we guarantee to refund your money in full'*

[+ More example sentences](#)

[+ Synonyms](#)

- 1.1 Pay back money to (someone)

*'I'll refund you for the apples and any other damage'*

[+ More example sentences](#)

[+ Synonyms](#)

The Cambridge Dictionary, <https://www.merriam-webster.com/dictionary/refund>:

Meaning of **refund** in English



# refund

**noun** [ C ]

UK /'riːfʌnd/ US /'riːfʌnd/



**B1**

**an amount of money that is given back to you, especially because you are not happy with a product or service that you have bought:**

- *I took the radio back to the shop and **asked for/demanded/got/was given** a refund.*